

Food & Consumer Safety Study Group

Meeting Summary

January 8, 2009

UM Helena, 1115 N. Roberts, Room 123

Attending Members: Shannon McDonald, Laurel Riek, Susan Brueggeman, Tim Roark, Jennifer Pinnow, Howard Reid, Shannon Therriault, Joe Russell, Jane Smilie, Dale McBride

Others: Julie Benson-Rosston (facilitator), Ruth Piccone, Tim Reed, Leah Merchant, Camie Zufelt, Christine Cox

10:00-10:15 Review Ground Rules, Study Group Roles & Responsibilities.....

Follow-up items from December 3 meeting:

- Would like to have a One-Stop representative speak to the group; Jane will contact Rochelle.
- Joe spoke with DEQ about a representative joining the FCS group; Jane will follow-up with Tom Livers.
- Roy Kemp with QAD/DPHHS will be participating in the group.
- Next meeting is scheduled for March 17th (1-5 pm) and 18th (8-3 pm).

10:15-11:30 Draft Cooperative Agreement Proposal.....

Jane introduced and reviewed a draft cooperative agreement between DPHHS and local health departments, which would supersede any other agreements currently in place.

Group Comments and Discussion:

- The cooperative agreement should be between DPHHS and the local board of health.
- Agreements should be signed by DPHHS' director or the director's authority.
- The agreement needs to include a payment schedule; certain deadlines are set in rule (which can and should be changed); other time schedules not fixed by rule can be reviewed and revised to best accommodate both the reports made by local entities, and the reports maintained by DPHHS.
- The designation of establishments as 'high-risk' or 'low-risk' needs to be clarified in the cooperative agreement through a policy decision.
- The existing cooperative agreement for public accommodations has provided a framework for inspection, under which some counties are operating. To negate this agreement now could hinder or prevent inspection efforts.
- Reporting forms will need to reflect any inspection schedule variations or exemptions granted to certain establishments.
- General 'business rules' should be added to the cooperative agreement.
- Termination allowances should be included in the agreement for counties that are unable to complete inspections due to an unexpected staff shortage.
- Counties would appreciate a report from DPHHS on completed/incomplete inspections, at least 30 days before the end of the fiscal year.

Jane proposed and the group agreed to the following:

1. If any county has a signed public accommodation agreement currently in place, that agreement is valid through 6/30/09.
2. The study group agrees to work on a policy decision on how to handle public accommodations, for the next cooperative agreement, before 6/30/09.

Shannon M. will work on another draft and will send it out to the group. The draft will be reviewed at the February MetNet meeting, and again at the March meeting if needed.

12:00-1:00 Working Lunch.....

Continuation of the above discussion on the draft cooperative agreement.

Public Comment Period: no public comments were made.

1:00-3:00 MetNet with Paula O'Brien.....

Paula presented Part 1 of a white paper, which will address standards (Pt. 1), compliance and enforcement (Pt. 2), and governance (Pt. 3). She outlined recommendations and options for dealing with the identified range of issues, and suggested that the group decide if they liked any of the options for fixing the problems identified in the laws. (Paula's remarks are headed in bold, with the group discussion listed under 'Comments'.)

Structure of food safety laws in Montana

Should there be a single statute and single set of rules? Or should they be left as is, with the content changed?

Options:

1. Repeal all statutes and rules, adopt a new food safety statute.
2. Leave the laws that are within the jurisdiction of other departments; consolidate the various acts into one set of rules/one act. This option could be advantageous because there would be primarily one place to look for food safety regulation. As much as possible, compliance and enforcement would be the same for all establishments. *This is the preferred option.*
3. Leave structures as they are, just tidy them up and improve the content. *This is probably the easiest option.*

Comments:

- Wholesale and retail establishments have been separated from each other; Montana's approach is to adopt by reference the federal regulations that apply. Recommend keeping this separation.
- From a local health department standpoint, like the idea of an FCS Act; like the idea of having as much as possible (enforcement, for example) in one place.
- Within a single statute, there could be separate chapters on individual concerns, as well as the common chapters. Perhaps there is middle ground we can work with.
- If we consolidate the acts, we have to be careful to maintain the separate definitions.
- Efforts to clarify/separate haven't necessarily been helpful to local jurisdictions; there is room for improvement.
- Perhaps structure the statute so that sections are separated out, but are physically in the same place.
- Could an FCS Act encompass public accommodations, etc., as well?

Who should be covered by the food safety laws? In the statutes, there are gaps in terms of establishments that are not currently covered, such as schools, hospitals, wild game processors, etc. For schools and hospitals, the rules currently say that a school isn't required to be licensed, but is required to comply with licensing regulations.

Option 1: require any and all establishments that serve food to be licensed.

Option 2: don't require licensing, but do require licensing authorities be informed of food service programs, and have the power to inspect the same as licensed establishments.

Comments:

Think that most schools in Montana are licensed. Don't like the idea of not receiving licensing fee revenues and yet being required to inspect. In some jurisdictions, schools are only inspected if time is available, and there isn't a licensing fee attached to the inspection.

Shannon M, with the help of Ruth, will do some research to find out if another department is or should be licensing and inspecting public schools, private schools, etc, and what DPHHS' role is or should be.

Wild game processors: what are the policy arguments for or against requiring them to be licensed? The current retail food act says they are *generally* a licensed food establishment, but are not covered when they provide processed meat to the owner of the carcass for serving for private consumption.

Comments:

- The department has little authority to regulate wild game processors; inspection by agencies that deal with meat and poultry regulation would be a better fit.
- The public health threat has to do with how the animal is handled before processing, of which there is no regulation; the determination needs to be made of how or if the government can attempt to regulate.

Regulation of bake sales as food service establishments. A bake sale is covered as a food service establishment, but the kitchen where the food is produced is NOT covered as a food service establishment. This is not consistent with public health rationale.

Option 1: remove the exemption for private kitchens – bake sales would only be able to be produced in kitchens that meet all food safety regulations.

Option 2: food produced must not be potentially hazardous (time/temp control); a placard must be posted at the point of sale noting that food is produced in a facility that does not abide by food safety standards; consumer should have no expectations and be given no guarantee.

Comments:

- A similar placard in wild game processing facilities might be a good option, because currently the public thinks that *someone* is inspecting the facility.

Farmers' Markets are similar to bake sales. Many products are not regulated, none are required to be licensed, and standards don't apply to many items. It doesn't make sense to regulate bake sales and *not* regulate Farmers' Markets. Perhaps signage is the answer again.

Comments:

- There is a difference between bake sales and farmers' markets: bake sales are usually non-profit, while farmers' markets are for-profit.
- Don't really want to regulate bake sales. There are licensed facilities that go to farmers' markets that operate for free, but don't operate for free in other venues.

What is the chance now of reversing farmers markets exemptions?

Comments:

- Hard to say, but an FCS Act would be a powerful tool.
- Considering the growing popularity of locally-grown produce, it would be difficult to regulate farmers' markets.
- It would be interesting to see what the perception of the restaurant industry would be; we may have their strong support in regulating these areas.

Compliance & Enforcement

There are lots of duplications and gaps in terms of taking enforcement measures. Would like to provide a toolbox to use for enforcement. Would like one chapter in statute that would deal with common compliance and enforcement topics, with specific provisions if/as needed.

Licenses

Is there a 'right' to a license? Currently licenses are granted as a right, unless grounds exist for denial/revocation. Recommend that the 'right' of being issued a license be removed. It is not clear who determines if an establishment receives a license. Are you happy with the current process, and should it be properly entered into statute and rule? Or should this be changed?

Comments:

- Application approval is required by the local health authority; DPHHS issues a license when approval is in hand and fees are received; the department issues license back to local health officer for validation.
- Would like to consider doing this very differently: consider having the counties be entirely responsible for licensing. This could be optional for counties who don't want to or can't take over licensing.
- It would be good to make explicit the criteria for granting a license, when applications are considered. License should not be issued unless it meets the criteria; this helps move away from the idea of a license being a 'right'.
- Don't like the idea that an establishment that *shouldn't* have been operating under a previous owner now can't be licensed under a *new* owner who is making a conscientious effort to be in compliance.
- This topic can be discussed further as the group does statutory review, to define categories of conditional licensing and revoking a license.

Suggest that an applicant is either granted or denied a license. It sounds like 'pending compliance' doesn't affect the license-holder, and the establishment is instead put on a plan for correction.

- If you deny a license, suggest changing the current process: notifying the applicant that a license is being denied (with an option for appeal) refers back to the idea that a license is not a right.
- The responsibilities of the license holder should be clear: for example, access to the facility must be granted when requested, the permit must be posted in a conspicuous location, etc.
- License renewals should be completed 30 days before the current license expires; if renewal hasn't been completed 2 weeks after date of expiration, the license does not exist and the facility should be shut down. A new license application would need to be submitted after that point.
- The license signals to the public that the establishment is committed to meeting the standards.
- Suspending and revoking license should be easier than it currently is.

Comments:

Suggest giving the local board of health the authority to close establishments that aren't in compliance.

At the February MetNet meeting, Paula will go through the remaining compliance and enforcement topics, as well as standards. She requested that the group read the white paper before the next meeting, and think about what the rules should be.

3:00-4:00 Resources Available to FCSS: IT, Legal.....

Dale explained that IT staff are working on updating the accounting system to make it a management tool for inspection notifications, from which reports can be provided to local jurisdictions. There have been key vacancies within the bureau and section, which are soon to be filled; workload divisions will be assessed when new staff are in place. Staff are also working on improving communications and dialogue with local entities.

Standards can be set out in formatting examples that are or will be sent out, along with the due-date schedule.

Christine Cox reviewed and explained the Garrison system's food service inspection reports, by county.

Dale explained that the original intent for the Garrison system was to have a standard system of importable data which all counties could use. The group discussed the fact that it may be a beneficial system, but not all counties have committed the staff and resources necessary to fully use it or know how worthwhile it is. Individual systems are also working well within each county. The state would need to have more participation to fully understand how useful the system is; if it is not a useful system, resources should not continue to be invested in it,

Dale encouraged group members to talk to their staff and neighboring counties to find out if and how the system is being used, and to consider the following:

- Should DPHHS continue to maintain this system?
- Do the counties want and need this system?
- If not this system, then what?
- Should the state survey counties regarding their usage of and thoughts on the system?

Julie suggested that the pros and cons of using the Garrison system should be discussed during a dedicated timeslot on a future agenda.

Shannon M: Legal resources/topics

Shannon receives many requests from counties for legal opinions. As an attorney, she cannot have two clients on opposite sides of a dispute; counties should seek advice from their county attorneys. Shannon's counsel is most useful in rule interpretation.

A comment was made that the counties are acting as agents of the state; if local jurisdictions don't have legal support from the Department, perhaps counties should be the licensing authorities. How, and in what ways, can the FCSS be a resource to the counties?

4:30-5:00 Next Steps and Meeting Evaluation.....

The following associations will be invited to send a representative to participate in the Food & Consumer Safety Study Group. Howard will follow up with Jane to share contact information for these associations.

- Montana Food Distributors
- Montana Restaurant Association
- Innkeeper's Association

Julie commented that the agendas have been very full, and thus conversations sometimes rushed. Some issues on the agenda were not addressed. Julie will solicit group input on future agendas.

What went well today:

- Good facilitation of discussion.
- Feel optimistic about the inclusion of Larry & Paula's work.
- Glad we went through the cooperative agreement, a lot of feedback was received.
- Group has a lot of good ideas; appreciate being a part of identifying problems and creating

solutions.

- The cooperative agreement was a tangible piece of work.
- Some of the things that came up in previous meetings are being included in ongoing conversations and work.
- Appreciate having the forum to discuss issues; leave the meetings feeling positive about the process.

What can be improved:

- Have materials to work on between meetings, more time to review materials, and more guidance on what will be expected of members at each meeting
- We are moving in the right direction with discussion, need to maintain the pertinent discussion topics that are mentioned; currently have too many topics to address.
- It feels like Larry & Paula's work is moving ahead of the group's work.